



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Ministry of Housing

A matter regarding Gamalos Group  
and [tenant name suppressed to protect privacy]

## **DECISION**

**Dispute Codes**      CNC

### **Introduction**

On June 5, 2023, the Tenant filed their Application at the Residential Tenancy Branch to dispute the One-Month Notice to End Tenancy for Cause (the “One-Month Notice”) served by their Landlord on May 25, 2023.

The matter proceeded by way of a hearing pursuant to s. 74(2) of the *Residential Tenancy Act* (the “Act”) on October 3, 2023. Both parties attended the teleconference hearing.

### **Preliminary Matter – Landlord’s service of evidence**

The Landlord confirmed they received the Notice of Dispute Resolution Proceeding served to them by the Tenant, along with evidence the Tenant prepared for this hearing.

The Landlord provided 12 documents to the Tenant, serving them in person on September 27, 2023. The Tenant signed a record of this transaction, i.e., the Proof of Service, prepared by the Landlord for this purpose.

The Tenant stated they received only partial evidence from the Landlord, after I listed what the Landlord provided to the Residential Tenancy Branch for this hearing in detail. The Landlord specified service of 12 documents to the Tenant on September 27.

I find the Landlord credible on their account of serving documents to the Tenant, as evidence in this legal proceeding, in a timely manner as required. I find it more likely than not that the Tenant was served the relevant documents. This is based on the level of specificity outlined by the Landlord in this hearing process; I find it more likely than not that the Landlord was

aware of the burden of proof in this matter, and provided evidence to the Tenant in an administratively fair manner as required.

### **Issues to be Decided**

Is the Tenant entitled to a cancellation of the One-Month Notice?

If the Tenant is unsuccessful in this Application, is the Landlord entitled to an Order of Possession of the rental unit, in line with the One-Month Notice, pursuant to s. 55 of the *Act*?

### **Background and Evidence**

The Tenant provided a copy of select pages of their tenancy agreement; the Landlord provided the full document. The related tenancy agreement for this particular rental unit stems from 2010. The final page in a space identified as “other” notes: “NO SMOKING – NO PETS”.

The Tenant in the hearing pointed out that separate clauses, listed as material terms in the agreement, were not checked in the original agreement:

- ☐ No smoking of any combustible material is permitted on the residential property, including within the rental unit.
- ☐ Smoking of tobacco products only is limited to within the rental unit.
- ☐ Smoking of tobacco products is only limited to the area described as \_\_\_\_\_

The Tenant’s point, as stated in the hearing, is that the notation “no smoking” refers to smoking within the rental unit only.

The Landlord issued the One-Month Notice, as it appears in the Tenant’s evidence, on May 25, 2023. This set an end-of-tenancy date for May 25, 2023. The reason provided on page 2 of the document is:

- ☐ Tenant or a person permitted on the property by the tenant has engaged in illegal activity that has, or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the property.
- ☐ Breach of a material term of the tenancy agreement that was not corrected within a reasonable time after written notice to do so.

The Landlord provided the following details on page 2 of the document:

TENANT HAS BEEN SMOKING IN APARTMENT AND ON THE PROPERTY. TENANT WAS WITNESSED AND PHOTOGRAPHED SMOKING ON THE PROPERTY. TENANT ADMITTED TO SMOKING ON THE PROPERTY.

PREVIOUS WARNINGS ISSUED – TENANT WAS GIVEN VERBAL AND WRITTEN WARNING TO STOP SMOKING AND WAS PREVIOUSLY ADVISED OF RULES AND LEASE CONDITIONS.

TENANT HAS SIGNED LEASE AGREEING THAT SMOKING IS NOT PERMITTED ON THE PROPERTY. TENANT WAS FOUND SMOKING ON NUMEROUS OCCASIONS AND

In the hearing, the Landlord outlined the actions of the Tenant that they feel constituted a breach of the tenancy agreement:

In the evidence, the Landlord provided the following documents:

- May 10, 2023 letter to the Tenant setting out a complaint of smoke from within the rental unit, as well as smoke from the balcony area – second-hand smoke bothering other residents. The Landlord requested the Tenant to “move off of the property and at least 15 meters away from the building”. The building is “designated as a non-smoking building.” The Landlord set out they asked the Tenant verbally to stop smoking.
- a “Smoke Free Property” poster and information sheet, setting out that “No smoking or vaping of any combustible material is permitted at any part of this residential property”. This sets out that the rule applies to “all balcony areas” and provides an illustration of what is meant by “fully or substantially enclosed”.
- samples of no smoking signage torn down by tenant. This includes a single-sheet, horizontal page showing “NO SMOKING”, as well as the “Smoke Free Property” sign set out above
- an information sheet setting out “Smoke-Free and Tobacco-Free Spaces” as set out in the *Tobacco Control Act* and *Tobacco Control Regulation* – in the description for this document the Landlord noted this information was handed to the Tenant
- May 16, 2023 “breach of tenancy agreement” warning letter setting out an incident of May 15 at approximately 8:20pm. A copy of the tenancy agreement was shown to the Tenant at that time, and advised that further smoking in the building or on the balcony “could result in eviction actions being commenced.”

- May 21, 2023 “breach of tenancy agreement” warning letter setting out a specific incident of May 20 at 7:00pm. noted Tenant smoking inside the rental unit, and outside on balcony “despite verbal and previous written warning”. The Landlord noted the Tenant had “signage that was removed from elevator walls and bulletin boards related to smoking rules in the building” and “Tenant admitted to taking signs down”. Tenant stated their disagreement and “said [they] would continue to stand up against the non smoking policy.”

This note, in handwriting, specifically attached another copy of the information sheet set out above.

- May 25, 2023 “breach of tenancy agreement” warning letter setting out the incident of May 24 at 4:21pm, where “Tenant after previous incidents was found smoking on property – breach of 47(1)(h)(e) [*sic*] – lease specifically states no smoking”
- April 14, 2016 caution letter given, incident report setting out that smoke detector went off in the rental unit, Tenant advised about smoking in the building

In the hearing, the Landlord provided some detail on their discussions with the Tenant about the rules in the building about smoking. They set out that the Tenant argued about the policy with the Landlord during one of the Landlord’s verbal warnings to the Tenant. The Landlord had discussions with the Tenant on May 8 and May 10. The Landlord stated clearly that the entire building was no smoking. There were verbal complaints from other tenants, emanating from the Tenant’s balcony with second-hand smoke.

The Landlord recalled the Tenant acknowledging smoking on their balcony in one discussion, then tearing up the Landlord’s notice and the notice to all residents that was posted by the elevator.

The Landlord made two verbal warnings to the Tenant, as well as two written warnings. They also had to make assurances to other building residents that they were dealing with the issue, making sure that signage and information showed all building residents that “enclosed areas” was made clear to all.

The Tenant responded to say they had only one single interaction with the Landlord’s agent who was present in the hearing. They did not know about the new agent who only started working in that role as of May 1. The Tenant stated that they did not see the present signage because they use an alternate entrance to the building where no signs were present.

## **Analysis**

The *Act* s. 47(1) provides authority for a landlord to issue a notice to end a tenancy if a tenant:

- engaged in illegal activity that had adversely affected or is likely to adversely affect the quiet enjoyment, security, safety or physical well-being of another occupant of the residential property
- failed to comply with a material term and has not corrected the situation within a reasonable time after the landlord gives written notice to do so

In this matter, the onus is on the Landlord to prove they have cause to end the tenancy.

I find the Landlord has provided sufficient evidence to show the activity of smoking – anywhere within the building or on the property – was known to the Tenant to be not permitted. As stated in the Smoke Free Property information sheet that I find the Landlord widely circulated and more likely than not made noticeable by all building residents: “All Smoking is Prohibited.”

I am satisfied, from the Landlord’s account, that the Tenant ignored verbal warnings and continued to smoke either on their balcony or in their rental unit. I find as fact that the Tenant was aware of the impact this was having on others, and the Landlord informed the Tenant of other building residents’ complaints about second-hand smoke.

The Tenant claimed they use an alternate entrance within the building; however, I find it highly unlikely the Tenant would not have been aware of signage in the building. As well, the Landlord informed the Tenant through their discussions about the issue, and provided a copy of the information to the Tenant. I accept the Landlord’s account that the Tenant had a copy of the information in their possession, and then tore up the information in the Landlord’s presence to show their dissatisfaction or disagreement with the smoke free property rules. I find the term “substantially enclosed” was made plain to all building residents, as illustrated in the diagram provided by the Landlord in the “Smoke Free Property” document.

I find the Tenant’s activity – deemed illegal as per the Smoke Free Property – was adversely affecting other residents’ quiet enjoyment, as described by the Landlord in this matter. This is the Tenant’s behaviour that was problematic for others. This all took place more recently in the month of May when the Landlord was responsive to specific complaints and incidents

brought to their attention. The Tenant consistently disobeyed building rules, after being made aware, and this caused unreasonable disturbance to others.

Aside from this, I find the Tenant removed signage that the Landlord had in place for the benefit of all Tenants, as a public health measure. The Tenant removing signage that contained this messaging, in and of itself, affects the enjoyment and physical well-being of others.

Given the information that was provided to the Tenant, and the publicly posted information about smoking on the property, I find the Tenant relying on the lack of a checked box in their original tenancy agreement is immaterial. There was abundant information provided by the Landlord in this situation, and it is not unreasonable to conclude that public standards regarding the safety and prohibition of smoking would receive an update.

I draw down the Tenant's credibility on the issue of the Landlord's disclosure of evidence for this hearing. I find the Tenant not believable in these instances, with their statements to the Landlord, as part of the record, illustrating their intent to protest the smoke free property rules. In sum, I find the Landlord more believable throughout on their account of the issue and their interactions with the Tenant on this bothersome issue.

For the reasons above, I find the Landlord's grounds for seeking to end this tenancy are valid. I find the Tenant's conduct, based on repeated incidents, had significant impact and arose to the level that can be described as adversely affecting other residents, based on the information that the Landlord presented accurately.

I cancel the Tenant's Application to cancel the One-Month Notice. The tenancy is ending.

Under s. 55 of the *Act*, when a tenant's application to cancel a notice to end tenancy is dismissed and I am satisfied the document complies with the requirements under s. 52 regarding form and content, I must grant the landlord an order of possession. The Landlord indicated the end-of-tenancy date was May 25, 2023; as per s. 53(2) the effective date is deemed to be June 30, 2023, that is the earliest date allowed.

I find that the One-Month Notice complies with the requirements of form and content. The Landlord is entitled to an order of possession on the effective date.

## **Conclusion**

I dismiss the Tenant's Application in its entirety and without leave to reapply.

I grant an Order of Possession to the Landlord, effective October 13, 2023 at 1:00pm. Should the Tenant fail to comply with this Order, the Landlord may file it with the Supreme Court of British Columbia where it will be enforced as an Order of that Court.

I make this decision on the authority delegated to me by the Director of the Residential Tenancy Branch under s. 9.1(1) of the *Act*.

Dated: October 4, 2023

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Residential Tenancy Branch